

2003-04

>>> "Mark Cooney" <cooneym@cooley.edu> 7/28/2005 5:38 PM >>>
July 28, 2005

Mr. Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: Adm File 2003-04
Proposed Amendment to MCR 7.205

Dear Mr. Davis:

The APPELLATE PRACTICE SECTION
respectfully submits the following position on:

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ADM FILE NO. 2003-04
Proposed Amendment of Rule 7.205 of the Michigan Court Rules

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The Appellate Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Appellate Practice Section only and is not the position of the State Bar of Michigan. To date, the State Bar of Michigan does not have a position on this matter.

The total membership of the Appellate Practice Section is approximately 690.

The position was adopted after discussion and vote by the Section's Council. The number of members in the decision-making body is 23. The number who voted in favor of this position was 14. The number who voted opposed to this position was 0.

The Appellate Practice Section of the State Bar of Michigan opposes the proposed amendment to MCR 7.205(F)(3), which would reduce from 12 months to 6 months the time limit for filing late applications for leave to appeal in the Court of Appeals.

From the criminal-law perspective, serious problems will arise. In non-appeal-of-right cases (pleas, trials with late counsel requests), appointments by definition occur well beyond 21 days. MCR 6.425 provides a defendant with 42 days after sentencing to timely request counsel. The trial court then has 14 days after the request to actually appoint counsel. While this is a worthy goal, in at least half of the cases, more than 56 days have passed and no counsel has been appointed.

Once counsel is appointed, the court rules set transcript preparation time at 91 days for trials and 28 days for pleas. Per the IOP's, counsel has 28 days to further review the court register and timely request the preparation of additional, needed transcripts. Once the transcripts are prepared and reviewed, counsel must then visit the client. Sometimes those clients are located locally, but at other times they are located very far away -- such as Marquette.

During this pre-briefing period, no court is available to provide assistance if counsel has a transcript-production problem. The fact is that appointed appellate counsel actually do not have anything close to a full 6 months to work with. Appointed appellate counsel advise the Section that in the best of MAACS/SADO cases, attorneys have less than half that time.

In the civil appellate context, late applications between 6 months and 12 months are relatively rare. Nonetheless, that additional period provides an important additional window for civil practitioners to discover and cure possible legal-malpractice claims. Often some miscommunication has occurred between attorney and client, or the client has a last-minute change of mind about appealing. The rare delayed civil application that is filed between 6 months and 12 months is a good safety-valve for clients that need the option and for attorneys facing those problematical cases that crop up in everyone's caseload.

The Section reminds the Court that just ten years ago, the rule was amended to reduce the delayed-application time from 18 months to 12 months. The Section sees no problems associated with the current deadline that would warrant further shortening the late-application deadline to 6 months. If there are competing views on this issue, the current 12-month deadline strikes an appropriate compromise.

For these reasons, the Appellate Practice Section respectfully opposes the proposed amendment to MCR 7.205. Thank you for providing us with the opportunity to comment on this proposed amendment.

Very truly yours,

J. Mark Cooney
Section Chair

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